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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 SCOTT R. KING,

11 Plaintiff,

12 vs.

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17 MICHAEL J. ASTRUE, *Commissioner of*
Social Security,

18 Defendant.

CASE NO. 09cv2420-MMA (POR)

**ORDER RE: REPORT AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE;**

[Doc. No. 20]

**DENYING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT;**

[Doc. No. 13]

**GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

[Doc. No. 16]

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21 On October 29, 2009, Plaintiff Scott R. King filed this appeal pursuant to Section 205(g) of
22 the Social Security Act, 42 U.S.C. § 405(g), seeking review of an adverse final decision of the
23 Commissioner of Social Security regarding his Supplemental Security Income benefits. The matter
24 was referred to the assigned magistrate judge for preparation of a Report and Recommendation,
25 pursuant to 28 U.S.C. § 636(b)(1)(B) and Civil Local Rule 72.1.¹

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27 ¹ The responsibility to make a final determination remains with the assigned district judge.
28 *Mathews v. Weber*, 423 U.S. 261 (1976). The district judge is charged with making a *de novo*
determination of those portions of the Report and Recommendation to which specific objection is made,
and may accept, reject, or modify, in whole or in part, the recommendation of the magistrate judge, or
recommit the matter to the magistrate judge with instructions. 28 U.S.C. § 636(b)(1).

1 On January 27, 2011, the magistrate judge filed a Report and Recommendation [Doc. No.
2 20] containing findings and conclusions, upon which she bases her recommendation that the Court
3 grant Plaintiff's motion for summary judgment [Doc. No. 13], deny Defendant's motion for
4 summary judgment [Doc. No. 16], and remand this matter to the Social Security Administration for
5 a recalculation of Plaintiff's benefits. Defendant filed a timely objection [Doc. No. 21] to the Report
6 and Recommendation, and Plaintiff filed a reply [Doc. No. 22]. The Report sets forth in accurate
7 detail the relevant facts and standards of law on this matter, and the Court incorporates such without
8 further recitation.

9 DISCUSSION

10 Plaintiff is the primary beneficiary of a special needs trust created in 1996 by his mother,
11 now deceased. On more than one occasion, the Social Security Administration has reviewed the
12 trust documents and assessed Plaintiff for overpayment of benefits, or reduced Plaintiff's monthly
13 Supplemental Security Income ("SSI") benefits, based on its classification of the trust disbursements
14 as unearned income. This appeal regards the Administration's most recent review of the trust and
15 the resulting reduction in Plaintiff's SSI benefits. Plaintiff challenges the continuing
16 appropriateness of the reduction in the absence of any unearned income from the trust. Specifically,
17 Plaintiff argues that commencing January 1, 2006, the monthly disbursements he receives from the
18 trust are in fact loans, which he is obligated to repay and thus do not qualify as unearned income.
19 As such, Plaintiff disputes the finding of the Administrative Law Judge ("ALJ") that a *bona fide*
20 loan agreement does not exist between Plaintiff and the trust, disbursements from which provide
21 in-kind support and maintenance to Plaintiff.

22 A district court may set aside an adverse final decision of the Commissioner if the ALJ's
23 findings are based on legal error or are not supported by substantial evidence in the record as a
24 whole. *See Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir.1999). Substantial evidence is more than
25 a mere scintilla, but less than a preponderance. *See id.* at 1098. "If the evidence can support either
26 outcome, the court may not substitute its judgment for that of the ALJ." *Matney v. Sullivan*, 981
27 F.2d 1016, 1018 (9th Cir.1992). Here, the Court finds that the evidence before the ALJ reasonably
28 supports his finding that a *bona fide* loan did not exist between Plaintiff and the trust, and as such,

1 the final decision of the Commissioner should not be disturbed.

2 As with any form of government assistance, an individual's eligibility for SSI benefits
 3 depends in part upon the income of the individual and the value of any resources owned by him or
 4 her. *See* 42 U.S.C. § 1382(a), § 1382c(a)(3)(A)-(C); 20 C.F.R. § 416.110 and 416.1201. However,
 5 a loan, whether consisting of cash or an in-kind advance in lieu of cash, is not treated as income for
 6 SSI purposes provided the loan is *bona fide*. *See* 20 C.F.R. § 416.1103(f); SSR 92-8p. SSR 92-8p
 7 provides a framework for determining when a loan is not considered income and when a loan is
 8 considered a countable resource under the SSI program. A *bona fide* loan is "an advance from
 9 lender to borrower that the borrower must repay, with or without interest." SSR 92-8p, 2. On the
 10 contrary, "[w]hen money or an in-kind advance in lieu of cash is given and accepted based on any
 11 understanding other than that it is to be repaid by the receiver, there is no loan involved for SSI
 12 purposes." *Id.*, 3. A *bona fide* loan agreement may be oral or written, but must be "recognized as
 13 enforceable under State law." *Id.*, 2. These requirements apply to "any commercial or
 14 noncommercial loan (between relatives, friends or others) that is recognized as enforceable under
 15 State law." *Id.*

16 The ALJ's decision properly addresses the guidelines set forth in SSR 92-8p. Under those
 17 guidelines, evidence must be obtained with respect to the existence of a *bona fide* loan agreement.
 18 *See* SSR 92-8p. As the SSI recipient, the burden of proof with respect to the showing of a *bona fide*
 19 loan was on Plaintiff. A review of the record indicates that Plaintiff had the opportunity to present
 20 adequate evidence of an alleged *bona fide* loan agreement. The ALJ weighed all the evidence and
 21 testimony in the record, and concluded that Plaintiff presented insufficient evidence to show that a
 22 *bona fide* loan agreement existed between himself and the trust. In justifying this decision, the ALJ
 23 wrote:

24 In this case, no written agreement has been provided concerning the nature and terms
 25 of the loans between the claimant and the trust. Nor were the terms of the loans
 26 disclosed orally at the hearing. In fact, there is no evidence in the record concerning
 27 the terms of these loans. Nor is it clear from the record how the claimant would repay
 28 such loans from the trust based on his limited, fixed income. Rather, it appears that
 the funds were disbursed to him so that he could pay for his shelter expenses directly
 to avoid having the funds treated as unearned income in his benefits calculation.
 Hence, the undersigned finds no evidence to establish the existence of *bona fide*
 loans.

[AR at 10.] More than a "mere scintilla" of evidence supports the ALJ's decision that the

1 disbursements from the trust were unearned income, and re-labeling the payments as “loans” was a
2 transparent attempt to maximize Plaintiff’s monthly SSI benefits, insufficient to establish a *bona fide*
3 loan. Therefore, the Court respectfully declines to adopt the magistrate judge’s recommendation to
4 the contrary.

5 The ALJ considered conflicting evidence in the form of witness testimony, trust documents,
6 bank account records, and records from Plaintiff’s prior dealings with the Social Security
7 Administration. During the administrative hearing, the ALJ heard testimony from the trustee,
8 Plaintiff, and Plaintiff’s attorney. The trustee and Plaintiff’s attorney advised the ALJ that the trust
9 provides Plaintiff with a \$200 loan monthly to assist with certain expenses. The ALJ explicitly
10 references this testimony in his decision. [AR at 16.] The ALJ also considered the record of written
11 correspondence between the Administration and Plaintiff indicating that the Administration had
12 investigated and ultimately rejected the trustee’s claim regarding the existence of a loan agreement.
13 For example, by letter dated December 10, 2005, the Administration notified Plaintiff that in order
14 to count the trust disbursements as a loan he would need to produce the original loan documents
15 established prior to the income being distributed. [AR at 107.] The Administration correctly
16 premised this request on the requirement that a *bona fide* loan be established prior to distribution of
17 the subject funds.

18 As the ALJ noted in his decision, no original loan documents of any kind were ever
19 introduced into the record. In the absence of any such documentation, the ALJ balanced the
20 evidentiary value of Plaintiff’s bank account statements showing direct payment of certain expenses,
21 with trust account statements showing a \$200 disbursement to Plaintiff each month to assist in the
22 payment of these expenses. It was not error for the ALJ to consider the lack of substantiating loan
23 documentation when reaching his decision. Nor was it incumbent upon the ALJ to request such
24 documentation specifically, when the burden of proof lies with the claimant, and the Administration
25 had given Plaintiff prior notice that such documentation should be submitted in order to establish the
26 existence of a *bona fide* loan.

27 Conflicts in evidence are for the ALJ to resolve, and where the evidence is susceptible to
28 more than one rational interpretation, the reviewing court may not substitute its judgment or

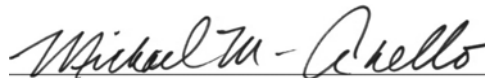
1 interpretation of the record for that of the ALJ. *Key v. Heckler*, 754 F.2d 1545, 1549 (9th Cir. 1985).
2 A review of the evidence and testimony in the record shows that the ALJ's decision is supported.
3 The ALJ weighed the evidence and testimony, and concluded that Plaintiff presented insufficient
4 evidence to show that a *bona fide* loan agreement existed between himself and the trust. The ALJ's
5 decision was properly guided by SSR 92-8p and applicable regulation codes.

6 **CONCLUSION**

7 Based on the foregoing, the Court concludes that the final decision of the Commissioner of
8 Social Security is supported by substantial evidence and comports with applicable law.
9 Accordingly, the Court declines to adopt the Report and Recommendation, **GRANTS** Defendant's
10 motion for summary judgment, **DENIES** Plaintiff's motion for summary judgment, and **AFFIRMS**
11 the decision of the Commissioner.

12 **IT IS SO ORDERED.**

13 DATED: February 18, 2011

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15 Hon. Michael M. Anello
16 United States District Judge
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